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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,213	12/11/2003	George S. Pabis	12093/929	7999
26646 7590 08/20/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER PALABRICA, RICARDO J				
ART UNIT 3663		PAPER NUMBER		
MAIL DATE 08/20/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/733,213

Applicant(s)

PABIS ET AL.

Examiner

Rick Palabrica

Art Unit

3663

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-21 is/are pending in the application.
- 4a) Of the above claim(s) 15, 18 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-14, 16, 17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's 7/10/08 Amendment, which directly amended claim 9, and traversed the rejection of claims in the 5/7/08 Office action, is acknowledged.

The examiner agrees with respect to applicant arguments regarding applied art Berglund and Field, Jr. but not with regard on Delevallee and Patterson et al., as discussed hereinunder.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9-14, 16, 17, 19 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention..

Claim 9 recites the limitation, "a tendon connecting the first closed end and the second closed end of each opening, such that the tendon bridges the first and second closed ends of each opening, and dividing each opening into two portions."

First, referring to applicant's figures (e.g., Fig. 2), the "first closed end", as set forth in the claim is the arched, top portion of the each of the two sleeve openings (sleeve opening is designated as element 28 in Fig. 1). The "second closed end" is the arched, lower portion of the each of the two sleeve openings. Note from Fig. 2 that tendon 66 is disposed between the two sleeve openings.

Thus, there is neither an adequate description nor enabling disclosure as to how and in what manner a tendon disposed between two top portions and between two bottom portions of adjacent sleeve openings (i.e., physically located outside either opening) can connect the top and bottom portions of each of the two sleeve openings.

Second, since the tendon is disposed outside either one of the two sleeve openings, there is also neither an adequate description nor enabling disclosure as to how and in what manner such tendon can divide each of these openings (i.e., individually) into so-called two portions.

3. Claims 9-14, 16, 17, 19 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The new matter pertains to the limitation, "a tendon connecting the first closed end and the second closed end of each opening, such that the tendon bridges the first and second closed ends of each opening, and dividing each opening into two portions."

See section 2 above.

4. Claims 9-14, 16, 17, 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague, indefinite and incomplete, and their metes and bounds cannot be determined because the claims are inconsistent with the drawings in regard to the limitation, "a tendon connecting the first closed end and the second closed end of each opening, such that the tendon bridges the first and second closed ends of each opening, and dividing each opening into two portions." See sections 2 and 3 above.

Response to Arguments

5. Applicant traversed applied art Patterson on the ground that the reference "does not disclose or suggest a sleeve having at least two openings, each opening having a first and second close ends, and each of the two openings having a tendon dividing the opening into two portions, as presently claimed." The examiner disagrees.

First, as demonstrated in sections 2 and 3 above, there is no showing of this limitation in applicant's invention. Thus, applicant's argument has no proper basis.

Second, the tendon shown in Fig. 11 of Patterson has the same configuration as the tendon (element 20, 60) shown in applicant's Figs. 1 and 2, i.e., both tendons are disposed between two adjacent openings (i.e., openings 28 in applicant's case and openings 60 in Patterson's case). Thus, the applicant has not shown that the references

do not teach what the examiner has stated they teach, nor, has the applicant shown that the examiner's reasoning for and manner of combining the teachings of references is improper or invalid.

6. Applicant traversed applied art Delevallee on the ground that the reference, "may disclose inserting a sleeve into an instrumentation tube and a cap into the sleeve, but there are no openings in the sleeve and the cap." The examiner disagrees.

The rejection of the claims is based on the combination of Delevallee and Patterson, and not on Delevallee alone. The teaching for the openings associated with the sleeve, and the tendon configuration that is similar to applicant's claimed invention is derived from Patterson. See section 5 above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9-14, 16, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delevallee et al. (U.S. 4,751,039) in view of Patterson et al. (U.S. 4,699,759).

The reasons are the same as those stated in section 8 of the 5/7/08 Office action, as further clarified in sections 5 and 6 above, which reasons are herein incorporated.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 571-272-6880. The examiner can normally be reached on 6:00-4:30, Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 14, 2008

/Rick Palabrica/
Primary Examiner, Art Unit 3663